IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Geeta & another Vs. Gotam & ors.

S.B.CIVIL MISC. APPEAL NO.287/1993

Against the award dated 16.04.1993 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case No.155/1988.

Date of Judgment : 30th November 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Dilip Kawadia for the appellants
Mr.L.S.Jodha for the respondent

BY THE COURT:

This appeal has been preferred by the claimants against the award dated 16.04.1993 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case No.155/1988 questioning the quantum of compensation awarded by the Tribunal in the sum of Rs.50,000/- on account of accidental death of Moda, father of appellant No.1 and husband of appellant No.2; and also questioning denial of compensation to the appellant No.2 treating her claim barred by limitation.

Brief facts relevant for determination of the questions involved in this appeal are that on 15.09.1982 Moda, father of appellant No.1 Kumari Geeta and husband of appellant No.2

Smt. Meerki, met with an accident upon falling out of the truck (RJY 9855) he was traveling in; wheel of the truck crushed his lower limbs and Moda succumbed to injuries so sustained on 17.09.1982 while undergoing treatment in hospital. On 01.06.1988 the present claimants Kumari Geeta, about 8 years in age and Smt.Meerki, about 27 years in age filed application for compensation and alleged that the deceased had gone with other labourers to Udaipur from his village; that the non-applicant No.1 truck driver took the deceased Moda in the vehicle as a labourer for unloading of the goods carried in the truck; that near Udiya Pole, for rash and negligent driving of the truck its cabin gate was jerked open; the deceased Moda was thrown out of the truck and wheel of the truck crushed his legs and he died in the hospital on 17.09.1982. The claimants stated the age of deceased at 20 years in paragraph 7 (ka) of the claim application but at 24 years in paragraph 10 (kha) of the application. Stating the income of the deceased at Rs.600/- per month as a labourer and likelihood of his earning till the age of 70 years and their dependency at Rs.400/- per month, the claimants sought compensation in the sum of Rs.1,44,000/- towards pecuniary loss, Rs.20,000/- for non-pecuniary loss and another Rs.1,500/- for transportation and funeral expenses. In this

manner, the claimants claimed total compensation in the sum of Rs.1,65,000/-.

The claimants also stated that the claim application was delayed by over 5 years and 2 months but the claimant No.1 was a minor as yet and bar of limitation would not apply upon her; that the claimant No.2 was an illiterate Adivasi lady ignorant of her legal rights and, therefore, delay deserves to be condoned. A separate application was also moved for condonation of delay supported by affidavit of Smt. Meerki, wife of the deceased Moda. Proceedings against non-applicant No.1 driver of the truck in question were dropped on 04.04.1989 at the request of the claimants. The non-applicant No.2 owner of the vehicle in question stated that the income of the deceased was only about Rs.200-300/- per month; that the accident was not caused by any negligence on the part of the non-applicant No.1; and that the amount of compensation, if payable, may be recovered from the insurer, non-applicant No.3.

The insurer in its separate reply submitted that Smt. Meerki, the wife of deceased, was not entitled to claim any compensation and her claim application was clearly barred by time; that no cause has been shown for condonation of delay in relation to applicant No.1 Kumari Geeta either and the claim application was liable to be rejected summarily. The insurer

also alleged violation of policy conditions by the insured and submitted that even if the deceased were shown to be a labourer on the vehicle in question, the liability of the insurer would be limited to the extent of liability under the Workmen's Compensation Act. The age and income of the deceased were also put to contention and it was also alleged that even if any amount would be payable, the same would be admissible only in relation to the claimant No.1 and the claim of claimant No.2 was liable to be rejected.

The Tribunal framed the following issues for determination of the questions involved in the case on 25.07.1990:-

> "1- आया दिनांक 15-9-82 को श्री मोडा की मृत्यु वि0 नं01 श्री गोतम के द्वारा वाहन संख्या आर 0 जे0 वाई 0 9855 को गफलत एवं लापरवाही से चलाने के कारण कारित हुई ?
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> 2- आया प्रार्थीगण क्लेम में बताई गई राशि रूपया 1,65,500/- या अन्य कोई राशि प्रतिकार में विपक्षीगण से पाने के अधिकारी है ? यदि हॉ तो कितनी व किस किस से ?
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> 3- आया बीमा कम्पनी के द्वारा जवाब दावे में उठाई गई मियाद की आपत्तियों के आधार पर बीमा कम्पनी का कोई दायित्व नहीं है?
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> 4- दादरसी ?"

On 25.07.1990 itself the Tribunal made an order allowing compensation for 'No Fault Liability' in the sum of Rs.15,000/- but made it subject to limitation and prohibited

withdrawal except interest till final decision. The record shows that a cheque in the sum of Rs.15,000/- was deposited by the insurer with the Tribunal on 22.03.1991 and the said amount was placed in a fixed deposit in the name of Smt. Meerki, wife of the deceased. In evidence were examined the claimant No.2 Smt.Meerki as AW-1 and claimant No.2 Kumari Geeta minor daughter of the deceased as AW-4 apart from Rama, brother of deceased as AW-2 and Gamna, a co-traveler with the deceased in the truck in question as AW-3. The claimants also produced relevant documentary evidence in the form of charge-sheet Ex.1, F.I.R. Ex.2, site inspection memo Ex.3 and post-mortem report Ex.4.

Learned Judge of the Tribunal took up issue No.3 in the first place and with reference to the stand of the insurer found that the claimant No.1 was a minor even at the time of filing of claim application and, therefore, her claim application could not be rejected as barred by time. However, thereafter the learned Judge considered the case of claimant No.2 Smt.Meerki and referred to her statement of having contacted a lawyer after one month of demise of her husband and so also the statement of the elder brother of deceased, Rama AW-2 who also admitted her having met a lawyer after a month; and observed that the grounds stated in the application of herself being illiterate Adivasi and ignorant of law were not

correct and, therefore, delay in her relation could not be condoned and her claim application was liable to be rejected. It was of course observed that insurer has not led any evidence and, therefore, other objections were not substantiated. Taking up the question of liability towards accident, after appreciation of the statements of the witnesses and the documentary evidence, the learned Judge found that the accident causing fatal injuries to deceased Moda occurred for rash and negligent driving of the truck by non-applicant No.1.

The learned Judge thereafter took up quantification of compensation in issue No.2. In the first place, the learned Judge accepted the income of the deceased at Rs.600/- per month as a labourer and dependency at Rs.400/- per month. In relation to the age of the deceased, the learned Judge observed that his age was stated at 24 years in the claim application but at 20 years in the statement of Smt. Meerki and at 30 years in the post-mortem report. However, assuming the age of claimant No.1 Kumari Geeta at 8 years at the time of accident, the learned Judge considered it proper to accept the age of deceased at 30 years purportedly with reference to the post-mortem report Ex.4. (This observation obviously seems incorrect, because in the post-mortem report age of deceased has been stated at 24 years). The learned Judge

thereafter observed that Geeta stated her age at 12 years and her studying in third standard and the claim application was filed on 01.06.1988, therefore, her age may be taken at 8 years at the time of accident and in the community of claimants, marriage is contracted at an early age. After these observations the learned Judge abruptly concluded that in view of her age and the approaching time of her marriage, of deprivation of love and affection of her father and mental agony and likely expenditure, in all an amount of Rs.50,000/- appears to be just and sufficient compensation to be allowed to Kumari Geeta. According to the learned Judge,-

> "प्राथीया सुश्री गीता की आयु ओर उसकी शादी होने के समय को ध्यान में रखते हुवे अपने पिता के स्नेह से वंचित होने एवं मानसिक कष्ट को विचार करते हुवे तथा मेडिकल खर्चे आदि को विचार करते हुवे मैं 50,000/- (पचास हजार रूपये) क्षतिपूर्ति राशि सुश्री गीता को दिलाये जाना परिस्थिति के अनुसार उचित एवं पर्याप्त मानता हूँ।"

From this amount of Rs.50,000/- the Tribunal ordered deduction of the amount received under 'No Fault Liability' and allowed interest at the rate of 12% per annum.

Assailing the award aforesaid, learned counsel for the appellants contended that the Tribunal has been in error in rejecting the claim of the wife of the deceased without considering that the claim application of the two claimants

was inseparable and under the scheme of the Act of 1939 such claim application could not be treated as barred by time. Learned counsel also submitted that the reasons of illiteracy and ignorance stated by claimant No.2 could not have been rejected as not disclosing sufficient ground and that the award of compensation in lump sum of Rs.50,000/- is too low and grossly inadequate. Learned counsel also referred to the decision in Dhannalal Vs. D.P.Vijayvargiya & others: JT 1996 (5) SC 601 to contend that in any case with the present appeal being pending before this Court, the claim deserves to be considered on merits. Learned counsel appearing for the insurer strenuously endeavored to support the impugned award and rejection of claim application of claimant No.2 and submitted that in the overall facts and circumstances of the case, the considerations adopted by the Tribunal remain justified and the award, even though made in a lump sum of Rs.50,000/-, cannot be said to be grossly inadequate. Learned counsel referred to the decision of the Hon'ble Supreme Court in the case of U.P. State Road Transport Corporation and others Vs. Trilok Chandra & others: 1996 ACJ 831.

Having given a thoughtful consideration to the rival submissions and having examined the entire record, this Court is clearly of opinion that the impugned award deserves

modification. Rejection of claim application of wife of the deceased neither seems proper nor could be countenanced; and the manner of making award in a meager amount of Rs.50,000/- cannot be appreciated.

So far the question of limitation is concerned, relevant it is to notice that the claimants are admittedly the members of scheduled tribe, belong to labour class and are illiterate persons. The claimants have not attempted to put forward any pretence and AW-1 Meerki has admitted having met a lawyer within a month of demise of her husband and Rama, her elder brother-in-law has also stated so but he has also stated in his statement made on 25.03.1991 that he met the lawyer for moving a claim about three years before. This reference to three years by him tallies with the date of filing of the claim application on 01.06.1988. Even if it be assumed that wife of the deceased met a lawyer a month after demise of her husband, it cannot be assumed that one such meeting instantaneously invested her with all information; and removed all her illiteracy and ignorance; and she became thoroughly aware and knowledgeable about the requirements of law. It would be impracticable to suggest that a hapless rustic lady in her prime youth who had been deprived of her husband due to accident and left with an infant could not ask for condonation of delay merely because she admitted having met a lawyer

once. There is no material on record to assume that she knowingly and intentionally avoided filing the claim application within time. With reference to the date of filing of claim application i.e. 01.06.1988, much before coming into force of the Motor Vehicles Act, 1988 (01.07.1989), delay in filing the claim application could definitely have been condoned with reference to Section 110-A (3) of the Motor Vehicles Act, 1939 as then existing.

Moreover, though after coming into force of the Act of 1988 on 01.07.1989 the provision was made in sub-section (3) of Section 166 limiting condonation of delay for 12 months only but the said provision was specifically deleted with effect from 14.11.1994 by the Amendment Act of 1994 with the result that there is no limitation for filing the claims before the Tribunal. In respect of said amendment, the Hon'ble Supreme Court in the case of Dhannalal (supra) specifically pointed out that where dispute regarding limitation is pending consideration whether before the Tribunal or in appeal, the benefit of amendment of sub-section (3) of Section 166 should be extended. Obviously the claim of wife of the deceased cannot be rejected as barred by time and deserves due consideration.

Coming to quantification of compensation, this Court is constrained to observe that the approach of the learned Judge of the Tribunal in abruptly picking the figure of Rs.50,000/- as

lump sum compensation and the observations made in relation to the age of the deceased and his daughter so also the observations regarding her marriage prospects, all remain entirely perverse and so also illogical. Post-mortem report Ex.4 specifically mentions the age of deceased at 24 years but the learned Judge has observed that in the post-mortem report the age of deceased was stated at 30 years. Then, admittedly the accident occurred on 15.09.1982. The age of Kumari Geeta, daughter of deceased, was stated at 8 years in the claim application filed on 01.06.1988. The said girl child stated her age at 12 years in her statement recorded before the Tribunal on 29.04.1991. On what basis the learned Judge has chosen to take her age at 8 years at the time of accident remains inexplicable. She was only about 2 years in age at the time of accident. In any case, it does not appear justified that by cursory reference to some facts regarding age and likelihood of marriage of the girl child, the Tribunal would choose to abruptly pick up a figure of Rs.50,000/- to be awarded as compensation. In a vehicular accident case, the award of compensation is required to be made on some rationale, some principle and on some basis and the Tribunal in every case cannot adopt the short-cut of awarding compensation in lump sum. The figure taken by the learned Judge of Rs.50,000/- remains disproportionately lower than

the figure of just compensation admissible in this case and, therefore, quantum of compensation deserves modification.

The accident in question occurred in the year 1982 and, therefore, the claim of monthly income of the deceased at Rs.600/- as a labourer could reasonably be accepted and loss of dependency for the claimants would stand at Rs.400/- per month leading to a multiplicand of Rs.4800/- per annum. The age of the deceased appears to be about 24 years and having regard to the circumstances of the case, it appears appropriate to apply a multiplier of 17 that leads to pecuniary loss in the sum of Rs.81,600/- (Rs.4,800/- x 17). The claimants deserve to be allowed another sum of Rs.10,000/- towards loss of consortium and loss of love and affection and yet another amount of Rs.1,400/- for funeral expenses. The claimants are, therefore, entitled for compensation at least in the sum of Rs.93,000/- (Rs.81,600/- + Rs.10,000/- + Rs.1,400/-) and there appears no reason to deny the claimants such compensation minimum. The Tribunal has of course allowed interest on the lump sum award made by it at the rate of 12% per annum, however, having regard to the enhancement being made herein and the time of making of claim application, it appears appropriate to allow interest on the enhanced amount at the rate of 9% per annum from the date of filing of claim application.

As a result of the aforesaid, this appeal succeeds and is partly allowed. The impugned award dated 16.04.1993 is modified and the claimants are awarded compensation in the sum of Rs.93,000/- in place of the amount of Rs.50,000/- as allowed by the Tribunal. On the enhanced amount of Rs.43,000/- the claimants shall be entitled for interest at the rate of 9% per annum from the date of filing of claim application. It is noticed from the record that the insurer had made payment under the impugned award on 28.05.1993 in the name of claimant No.1. However, in view of the modification being made herein, it is considered appropriate and hence directed that the amount payable under the modified award shall be deposited by the insurer within 30 days from today and upon deposit, the Tribunal shall take note of the amount previously received by the respective claimants and carry out apportionment in the manner that both the claimants shall receive equal amount under the total award. Parties shall bear their own costs of this appeal.

(DINESH MAHESHWARI),J.

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